IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 24448 of 1998

Between:

C. Kamalakar Rao, S/o Late C. Agama Rao
E.No. 83123, Booking Clerk,

R/o Sriramnagar Colony, Kamareddy,

Nizamabad District

..... PETITIONER

AND

1 The Managing Director, APSRTC, Musheerabad, Hyderabad.
2 The Regional Manager, APSRTC, Nizamabad,
3 The Depot Manager, APSRTC Bus Depot: Kamareddy, Nizamabad Dist.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the 2nd and 3rd Respondents in respect of the impugned Procgs.No.L1/785/(117)/96-RM-NZB, dated. 30-3-98 and issue appropriate writ or direction particularly one in the nature of WRIT OF MANDAMUS declaring the action of the 2nd Respondent in rejecting the correction of the date of birth as 8-9-1956 from 8-9-1950 is illegal, unjust and in violation of Articles 14, 16 & 21 of the Constitution of India and orders made by this Hon'ble Court in W.P.No.27144 of 1996 and W.A.No.914/97 and consequently direct the respondents to enter the date of birth as 8-9-1956 in the service records in the interest of justice and fair play

Counsel for the Petitioner: Mr.V.NARASIMHA GOUD

Counsel for the Respondents: Mr.V.T.M.PRASAD,SC for APSRTC

The Court made the following :

O R D E R:

This case has got a chequered history. The petitioner has been working as a Booking Clerk in the respondent-A.P.State Road Transport Corporation. Earlier, the petitioner filed W.P.No.27144 of 1996 for correction of date of birth in his service record as 8-9-1956 instead of 8-9-1950. The said writ petition was disposed of on 10-4-1997 with the following directions:

> "....Under these circumstances, I am inclined to set aside the impugned order and direct the respondent-corporation to enter the date of birth of the petitioner as per the transfer certificate dated 11-11-75 issued by the Prl.Government Junior College for Boys, Karimnagar i.e. 8-9-56. The writ petition is accordingly allowed..."

Challenging the said order, the Management had filed an appeal being Writ Appeal No.914 of 1997, which was disposed of on 21-8-1997 as under:

> "The case of the petitioner-respondent does not appear to be one of an employee, who is seeking correction in the entry of the date of birth by dint of the material evidence, which he proposes to produce subsequently. According to the case of the petitioner-respondent, all materials which were made available by him at the time of entry into the service indicated the date of birth as being 8-9-1956. By mistake only in the service book it appears "6" in 1956 was noted as "0" and thus as '1950'. It is thus a case different from the case in which employees, who advance their period of service seek change in the date of birth. Learned single Judge cannot be said to have committed any error in allowing the petition to correct the date of birth is concerned. Proper direction, in our view, on the facts of the case would be that the appellant would take into account all materials in its record of service of the petitioner-respondent as well as the alleged school transfer certificate and decide upon the same, whether it is a mistake in the entry of the date of birth and in case it is found to be a mistake, to correct the same in accordance with law. All these formalities must be completed within a period of two months..."

Thereafter, the 2nd respondent issued Proceedings No.L1/785(117)/96-RM: NZB, dated 30-3-1998 confirming the date of birth of the petitioner as 8-9-1950. Aggrieved by the said order, the present writ petition is filed.

In this writ petition, the petitioner complained that his case was not considered by the respondent-Management as per the directions of this Court in W.A.No.914 of 1997, dated 21-8-1997; therefore, erred in coming to the conclusion that his correct date of birth as 8-9-1950 instead of 8-9-1956.

A detailed counter affidavit has been filed denying the allegations made by the petitioner and substantiating the reasons for confirmation of the date of birth of the petitioner as 8-9-1950 stating that after examining the available records including the Transfer Certificate submitted by the petitioner, the impugned proceedings were issued. Further, the date of birth of an employee cannot be changed in view of the Circular dated 3-6-1994, in which it was clearly stated that the change of date of birth cannot be entertained at a distant date. After close examination of the service record and by scrutinizing the documents, the authorities came to the conclusion that the date of birth of the petitioner was 8-9-1950 and not 8-9-1956 as stated by the petitioner.

Pursuant to the directions of this Court, the learned Standing Counsel for the respondent-Corporation produced the original records. Heard the learned counsel for the parties and perused the entire record.

On a close perusal of the record, it is seen that when the petitioner was sent for medical examination at the time of initial appointment, his date of birth was mentioned as 8-9-1956 in the requisition, which according to the management, was a mistake. The Medical Officer, who examined the petitioner on 5-10-1978, had recorded the age of the petitioner as 22 years, but the Medical Officer was not asked to decide the age of the petitioner and he was asked to examine about the fitness of the petitioner. This seems to have led to some confusion in the department. But, as seen from the original record i.e. personal data sheet, which was maintained by the corporation, and which was signed by the petitioner on 15-3-1984, it is clear that the date of birth of the petitioner was recorded as 8-9-1950 in his own handwriting. Whereas, in the Declaration Form for Employees' Family Pension Scheme-1971, which was signed by the petitioner on 10-7-1989, the date of birth of the petitioner was mentioned as 8-9-1956. Again in the Form of Declaration for Guaranteed Provident Fund dated 10-7-1989, the date of birth of the petitioner was shown as 8-9-1956. Here, there is a clear interpolation of the year. Originally, it was written as 8-9-1950, but '0' was made as '6', which can be seen by the naked eyes. In the

Declaration and Nomination Form under Employees Provident Fund Scheme-1952, on 22-1-1991, the date of birth of the petitioner was shown as 8-9-1950 and his age as 40 years as on that date i.e. 22-1-1991 and it was signed by the petitioner. In the Nomination Form meant for APSRTC Staff Benevolent-cum-Thrift Fund, the date of birth of the petitioner was shown as 8-9-1950 and it was signed by the petitioner.

Learned counsel for the respondent-Corporation submits that wherever it was possible '0' in the figure '1950' was changed as '6'. At least in one such document, as noted above, the same seems to be correct. The petitioner himself has signed all the other papers, wherein his date of birth was shown as 8-9-1950, and where the interpolation was not possible, it was not attempted to. Learned counsel for the petitioner submits that the transfer certificate issued in favour of the petitioner by the concerned College in which the petitioner studied would show that the date of birth of the petitioner was 8-9-1956 and, therefore, the wrong entry made by the Officers in the service book of the petitioner and in Nomination Forms etc., cannot be taken as a standard. Necessarily, the transfer certificate, which was got verified ought to have been taken into consideration for the purpose of recording the correct date of birth of the petitioner, which was not done by the respondents while passing the impugned order; therefore, the impugned order is liable to be set aside.

As seen from the above, there is really some confusion as to the date of birth of the petitioner. At this stage, learned counsel for the respondents stated that the petitioner studied upto HSC; therefore, it would be better if the petitioner submits the original HSC certificate issued by the Board of Secondary Education and that would clear the fog. On verification of the transfer certificate and also the personal data sheet it is seen that the petitioner passed HSC. Therefore, this Court called for the learned counsel for the petitioner to obtain original HSC from the petitioner and/or to obtain the hall ticket number and year of appearing HSC examination for verifying the facts and the matter was adjourned for one week on 11-11-2004. When the matter had come up for further hearing on 19-11-2004, learned counsel for the petitioner submitted that he is not able to contact his client and the HSC certificate, in fact, is not available only to draw an inference that if HSC certificate is produced the correct date of birth would come out and probably it would go against the petitioner. The date of birth recorded in the HSC is always taken as a standard one for all purposes, either for employment or otherwise. Learned counsel for the petitioner could not produce HSC certificate in spite of giving ample time to produce

the same. Therefore, this Court has no option except to come to the conclusion that the petitioner is not ready to disclose his real date of birth as recorded in the HSC. The petitioner did not even disclose the hall ticket number and the year of appearing the said examination, since this Court expressed in the open Court that if the HSC certificate proves that the date of birth of the petitioner is 8-9-1950 the petitioner is also liable to be prosecuted. In the impugned order also, it is specifically mentioned that the petitioner has not submitted his HSC certificate at the time of appointment. This is nothing but a speculative litigation to gain undue advantage of a mistake that occurred at the time of recording his date of birth in a slip through which he was sent for medical examination at the time of his initial appointment in the year 1978. At the earliest point of time in the 'personal data sheet', which was signed by the petitioner on 15-3-1984, his date of birth was recorded as 8-9-1950. In the Declaration and Nomination Form under E.P.F.Scheme,1952, on 22-1-1991 the date of birth of the petitioner was shown as 8-9-1950 and in the Nomination Form meant for APSRTC Staff Benevolent-cum-Thrift Fund, which was signed by the petitioner, also, the date of birth of the petitioner was shown as 8-9-1950. Petitioner has not taken any objection as to the entry of his date of birth as 8-9-1950 in the years 1984 and 1991. He raised objection only after more than 16 years of his entry into the service of the respondent-Corporation. Such an objection raised by the petitioner seeking correction of date of birth by suppressing HSC certificate cannot be accepted. This all would not inspire the confidence of the Court to come to the conclusion that the correct date of birth of the petitioner was 8-9-1956 and not 8-9-1950. The writ petition is devoid of merits and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

25-11-2004

PRK

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director, APSRTC, Musheerabad, Hyderabad.
2 The Regional Manager, APSRTC, Nizamabad,
3 The Depot Manager, APSRTC Bus Depot: Kamareddy, Nizamabad Dist.

4. 2CD copies